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September 1, 1953
Opinion No. 53-135

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TO: Mr. Roscoe Stanford
Supervisor
Financial Responsibility Section
Arizona Highway Department
Phoenix, Arizona

RE: Construing Section 66-1333, A.C.A.
1939, 1952 Supplement, with regard
to drivers of public owned vehicles.

In your letter of July 14, 1953, you inquired of this office as to the propriety of the following procedure:

1. "Pursuant to Chapter 66-1-333, the Financial Section is not granting exception to the operators of motor vehicles owned by the State or a political subdivision therein."

Section 66-1333, A.C.A. 1939, 1952 Supplement, reads as follows:

"66-1333. EXCEPTIONS.--This Act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; *****."

It appears from a reading of the above section that the exemption applies only to the motor vehicles owned by the United States, the state, or any political subdivision of the state or any municipality therein, and if the drivers of said vehicles are to be exempt from the provisions of the Safety Responsibility Act, such exemption must be inferred from this section.

Mandatory suspension of an operator's license is provided for under Section 66-1305(a), A.C.A. 1939, 1952 Supplement:

"66-1305. SECURITY REQUIRED FOLLOWING ACCIDENT-EXCEPTIONS.--(a) The superintendent shall, within 60 days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of \$100.00, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within

this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which shall be sufficient in the judgment of the superintendent to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such operator or owner; provided notice of such suspension shall be sent by the superintendent to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security."

An "operator" is defined in Section 66-1301, A.C.A. 1939, 1952 supplement, as:

"Operator'. Every person who is in actual physical control of a motor vehicle, whether or not licensed as an operator or chauffeur under the laws of this state."

Thus, it appears that any person employed by the state or any political subdivision therein driving a motor vehicle owned by the state or political subdivision when involved in an accident which results in bodily injury or death or damage to the property of any one person in excess of \$100 must comply with the requirements of the Motor Vehicle Safety Responsibility Act or have his operator's license suspended in lieu of such compliance.

The rule governing the liability of officers, agents and servants of a state or political subdivision therein, for their negligent acts, is set forth in 49 Am. Jur. - States, Territories and Dependencies, Section 76, p. 289, as follows:

"The rule that the state is not liable, unless it has voluntarily assumed such liability, for tortious acts of its officers, agents, or servants resulting in injuries to individuals or to private corporations or other legal entities does not mean that the persons injured are remediless; ordinarily, the officer or employee committing the tort is personally liable therefor, and may be sued as any other citizen and held answerable for whatever injury or damage results from its tortious act."

An officer or employee of a municipality is personally liable to one injured by his negligence while in the discharge of his duties. 40 A.L.R. 1358.

The Supreme Court in the case of RUTH v. RHODES, 66 Ariz. 129, 185 P. 2d, 304, held an Arizona Highway patrolman liable for his negligent driving while acting within the scope of his employment and quoted from the case of FLORIO v. SCHMOLZE, 101 N.J.L. 535, 129 A. 470, 40 A.L.R. 1353, as follows:

"We think that a sound public policy requires that public officers and employees shall be held accountable for their negligent acts in the performance of their official duties, to those who suffer injury by reason of their misconduct. Public office or employment should not be made a shield to protect careless public officials from the consequences of their misfeasances in the performance of their public duties."

The duty to comply with the laws governing the use of highways by motor vehicles is imposed upon drivers of vehicles owned by the state or any political subdivision thereof under Section 66-152(c) A.C.A. 1939, 1952 Supplement:

"66-152c. PUBLIC OFFICERS AND EMPLOYEES TO OBEY ACT-EXCEPTIONS.--(a) The provisions of this act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this act with reference to authorized emergency vehicles.

(b) Unless specifically made applicable, the provisions of this act shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway, or to railroad employees working on a railroad track or tracks crossing the highway, but shall apply to such persons and vehicles when traveling to or from such work."

Section 66-152d (d) imposes a duty to exercise due care upon drivers of authorized emergency vehicles:

"(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

From the foregoing we may conclude that employees of the State, or a political subdivision thereof may be liable for their negligent acts in operating motor vehicles. Inasmuch as the Legislature specifically exempts only the motor vehicles owned by the United States, state or any political subdivision of the state or any municipality therein, from the provisions of the Motor Vehicle Safety Responsibility Act, we conclude that the drivers of such vehicles must be financially responsible if they are to continue driving after they have been involved in an accident resulting in bodily injury or death or property damage in excess of the amount of \$100 to property owned by any one person.

The Financial Responsibility Section need not determine if a particular individual is exempt from liability for his negligent acts under the law as a result of the nature of his employment with the state or political subdivision. Such determination must be left to a court of law.

Section 66-1306(5), A.C.A. 1939, 1952 Supplement, reads as follows:

"66-1306. EXCEPTIONS TO REQUIREMENT OF SECURITY.--
5. In the event the driver at the time of an accident was driving a motor vehicle owned, operated or leased by the employer of such driver and with the permission of the employer then the security provisions of this chapter shall apply to the employer and the suspension provisions of this chapter shall apply to the registration of all vehicles not covered by insurance, bond, or self-insurance certificate at the time of the accident which vehicles were owned, operated or leased by the employer and shall not apply to such driver."

It appears from a careful reading of the above section that it was the intent of the Legislature to relieve operators of motor vehicles owned by the operator's employer from the security provisions of the Financial Responsibility Act by imposing such provisions upon the employer. Thus, the third party sustaining personal injury or property damage would be able to levy against security placed with the Superintendent of Motor Vehicles once he had obtained a judgment for damages resulting from the accident.

The Motor Vehicle Safety Responsibility Act is a remedial statute designed to protect persons traveling on the highways of this state from financially irresponsible persons, and to compel persons involved in an accident to post security or file proof that they were covered by an automobile liability policy at the time of the accident. It is a general rule of law that statutes which are remedial in nature are entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute. Should we construe Section 66-1306(5) supra, to exempt drivers of motor vehicles owned by the state or any political subdivision of this state from the security provisions of the Financial Responsibility Act, then persons sustaining damages

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as a result of an accident involving a state, county or city owned vehicle would be without the remedy the Act was intended to provide. Therefore, it is concluded that this section does not have application to drivers of motor vehicles owned by governmental agencies within this state.

It is the conclusion of this office that drivers of motor vehicles owned by the state or any political subdivision of this state or any municipality therein are subject to the provisions of the Motor Vehicle Safety Responsibility Act.

ROSS F. JONES
The Attorney General

EARL E. WEEKS
Assistant to the
Attorney General

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